92-1440

Supreme Court, U.S.
FILED
MAR 4 1993
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No.

In The

Supreme Court of the United States

OCTOBER TERM, 1992

JACQUELYNE L. NEAL,

Petitioner,

v.

WILLIAM H. BROWN, et al., partners
practicing law under the firm name of
Schnader, Harrison, Segal & Lewis

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the Court of Appeals, erred by failing to accurately reflect the record on appeal within its Opinion and by disregarding the District Court's failure to adhere to the provisions of 28 U.S.C. §1441(b), §1447(c), §1447(e), Rules 13(a) and 15(a) of the Federal Rules of Civil Procedure, and §41-108(a) of the D.C. Code, where one hundred four (104) licensed attorneys are appearing as defendants in a multi-million dollar lawsuit, filed by a former client, who is appearing pro se against these licensed attorneys?

2. Whether the Court of Appeals for the District of Columbia Circuit departed from the accepted and usual course of judicial proceedings, as well as sanctioned such departure by the District Court for the District of Columbia, by dismissing Petitioner's appeal for lack of jurisdiction; by failing to exercise its inherent supervisory power to cure defects in subject matter jurisdiction; and by failing to order the District Court to remand this action to the Superior Court?

3. Whether the Court of Appeals for the District of Columbia Circuit deliberately disregarded the administrative and judicial schemes authorized by Congress in 28 U.S.C. §1292(a)(1) by redirecting Petitioner's appeal to 28 U.S.C. §1291, as well as deliberately disregarded the administrative and judicial schemes authorized under 28 U.S.C. §1654, by appointing amicus curiae, sua sponte, to argue the appeal on behalf of Petitioner, rather than allowing Petitioner to proceed with her appeal independently, without the appointment of amicus curiae?

4. Whether the Court of Appeals' appointment of amicus curiae, sua sponte, prejudiced the disposition of Petitioner's appeal?

LIST OF ALL PARTIES TO THE PROCEEDINGS

The parties to the proceedings below were the petitioner, Jacquelyne L. Neal, and the following defendants below and Respondents to this petition (listed as they appeared in the style of the case):

WILLIAM H. BROWN, III, ARTHUR H. KAHN, EDWARD W. MULLINIX, FRANK H. ABBOTT, MILTON D. ANDREWS, MASON AVRIGIAN, LAURANCE E. BACCINI, WILLIAM M. BARNES, DAVID G. BATTIS, EDWARD L. BAXTER, RICHARD D. BIRNS, STEPHEN D. BROWN, CHARLES R. BRUTON, M. CHRISTINE CARTY, S. JAY COOKE, J. GORDON COONEY, JAMES D. CRAWFORD, JOSEPH C. CRAWFORD, JOHN J. CUNNINGHAM, III, PAUL G. DEMBLING, DIANA S. DONALDSON, J. ALLEN DOUGHERTY, JAMES A. DROBILE, ISAAC E. DRUKER, JOSEPH B. ERWIN, PETER FEUERLE, ALMA S. FLESCH, W. MICHAEL GARNER, ALLAN D. GOODRIDGE, CARL J. GREEN, PETER S. GREENBERG, STEPHEN J. GREENBERG, THOMAS A. GREENE, VINCENT P. HALEY, JACOB P. HART, BANCROFT D. HAVILAND, RONALD E. HAYDANEK, CHARLES C. HILEMAN, III, CHARLES M. HONART, DAVID S. HOPE, JEFFREY R. HOROWITZ, JOHN H. HOUGH, JOHN D. ISKRANT, M. RICHARD KALTER, STEVEN R. KANES, JOHN T. KEHNER, ROBERT L. KENDALL, JR., ALAN H. KENT, DAVID E. KENTY, BRENDA C. KINNEY, WILBUR L. KIPNES, PHILIP G. KIRCHER, MARILYN Z. KUTLER, JOHN P. LAMPI, LARRY P. LAUBACH, JOHN H. LEDDY, NICHOLAS J. LePORE, III, SAUL LEVIT, JOSEPH LEVY, ALAN M. LIEBERMAN, MICHAEL J. MANGAN, JOHN E. McKEEVER, THOMAS J. McLEAN, HERBERT S. MEDNICK, ALBERT MOMJIAN, BARRY S. NEUMAN, GEORGE H. NOFER, ROBERT P. OBERLY, THOMAS EARL PATTON, RICHARD A. PENNA, DAVID S. PETKUN, NICHOLAS N. PRICE, YVES P. QUINTIN, GEORGE E. RAHN, JR., DONALD H. RIVKIN, SANFORD M. ROSENBLOOM, BRUCE A. ROSENFIELD, FRANK C.

SABATINO, THOMAS R. SCHMUHL, DEENA JO SCHNEIDER, LAURENCE SCHOR, JEFFREY L. SCHULTE, DONALD M. SCHWENTKER, IRVING R. SEGAL, JEROME J. SHESTACK, BARRY SIMON, DAVID SMITH, DELBERT D. SMITH, BERNARD J. SMOLENS, RALPH S. SNYDER, CARL A. SOLANO, BARRY R. SPIEGEL, GERARD J. ·ST. JOHN, CLINTON A. STUNTEBECK, DENNIS R. SUPLEE, SHERRY A. SWIRSKY, JOSEPH A. TATE, IRA P. TIGER, MARTIN WALD, RALPH G. WELLINGTON, MARGARET S. WOODRUFF, JOHN M. WYSER-PRATTE, (partners practicing law under the firm name of Schnader, Harrison, Segal & Lewis), BERNARD G. SEGAL (former senior partner — presently counsel for the firm), LOUIS R. MOFFA, JR. (former associate of the firm).

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Petitioner, Jacquelyne L. Neal, respectfully prays that a writ of certiorari issue to review the opinion of the United States Court of Appeals for the District of Columbia Circuit, entered in the above styled proceeding on December 11, 1992.

OPINIONS BELOW

The Opinion of the U. S. Court of Appeals for the District of Columbia Circuit is reported at 980 F.2d 747 (D.C. Cir. 1992). The Opinion has been reprinted and appears in the appendix, 1-4a, infra.

The memorandum and order of the United States District Court for the District of Columbia has been reprinted and appears in the appendix, 5-7a, infra. The memorandum and order was not reported.

JURISDICTION

A timely appeal was taken by Petitioner, pursuant to 28 U.S.C. §1292(a) (1), on March 29, 1991, from the District Court's March 6, 1991 interlocutory memorandum and order, denying Petitioner injunctive relief and denying Petitioner's motion to remand her removed action.

The Opinion of the Court of Appeals was entered on December 11, 1992, dismissing Petitioner's appeal for lack of jurisdiction. No petition for rehearing was sought.

The jurisdiction of this Court to review the Opinion of the Court of Appeals for the District of Columbia Circuit is invoked under 28 U.S.C. §1254(1).

STATUTES AND RULES INVOLVED

28 U.S.C. §1291 Final Decisions of District Courts

The courts of appeals (other than the United States Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court. The jurisdiction of the United States Court of Appeals for the Federal Circuit shall be limited to the jurisdiction described in sections 1292(c) and (d) and 1295 of this title.

28 U.S.C. §1292(a) (1) Interlocutory Decisions

(a) Except as provided in subsections (c) and (d) of this section, the courts of appeals shall have jurisdiction of appeals from:

(1) Interlocutory orders of the district courts of the United States,

the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, or of the judges thereof, granting, continuing, modifying, refusing or dissolving injunctions, or refusing to dissolve or modify injunctions, except where a direct review may be had in the Supreme Court.

28 U.S.C. §1441(b) Actions Removable Generally

(b) Any civil action of which the district courts have original jurisdiction founded on a claim or right arising under the Constitution, treaties or laws of the United States shall be removable without regard to the citizenship or residence of the parties. Any other such action shall be removable only if none of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought.

28 U.S.C. §1447(c) and (e) Procedure After Removal Generally

(c) A motion to remand the case on the basis of any defect in removal procedure must be made within 30 days after the filing of the notice of removal under section 1446(a). If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded. An order remanding the case may require payment of just costs and any actual expenses, including attorney fees, incurred as a result of the removal. A certified copy of the order of remand shall be mailed by the clerk to the clerk of the State court. The State court may thereupon proceed with such case.

(e) If after removal the plaintiff seeks to join additional defendants whose joinder would destroy subject matter jurisdiction, the court may deny joinder, or permit joinder and remand the action to the State court.

28 U.S.C. §1654 Appearance Personally Or By Counsel

In all courts of the United States the parties may plead and conduct their own cases personally or by counsel as, by the rules of such courts, respectively, are permitted to manage and conduct causes therein.

Rule 13(a), F.R.C.P. Counterclaim and Cross-Claim

(a) Compulsory Counterclaims. A pleading shall state as a counterclaim any claim which at the time of serving the pleading the pleader has against any opposing party, if it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim and does not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction. But the pleader need not state the claim if (1) at the time the action was commenced the claim was the subject of another pending action, or (2) the opposing party brought suit upon the claim by attachment or other process by which the court did not acquire jurisdiction to render a personal judgment on that claim, and the pleader is not stating any counterclaim under this Rule 13.

Rule 15(a), F.R.C.P. Amended and Supplemental Pleadings

(a) Amendments. A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, the party may so amend it at any time within 20 days after it is served. Otherwise a party may amend the party's pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within 10 days after service of the amended pleading, whichever period may be the longer, unless the court otherwise orders.

§41-108(a) D.C. Code Uniform Partnership Act

Role of Partners in Partnership Business; Acts Requiring Authorization for Binding; Acts Requiring Authorization by All Partners

(a) Every partner is an agent of the partnership for the purpose of its business, and the act of every partner, including the execution in the partnership name of any instrument, for apparently carrying on in the usual way the business of the partnership of which he is a member binds the partnership, unless the partner so acting has in fact no authority to act for the partnership in the particular matter,

and the person with whom he is dealing has knowledge of the fact that he has no such authority.

STATEMENT OF THE CASE

Petitioner, a former investigator with the Equal Employment Opportunity Commission (EEOC), retained Respondents (more than 100 partners practicing law under the firm name of Schnader, Harrison, Segal & Lewis) for legal representation during her administrative appeal before the Merit Systems Protection Board (MSPB). [2-4A; 21-24A; 26A][1]

Petitioner prevailed in her case against the EEOC, and won her battle against on-the-job sexual harassment and retaliatory termination, after having undergone more than a decade of hard-core retaliation by this agency. [2-4A; 15A]

MSPB, after having found that prohibited personnel practices were committed by the EEOC, and Petitioner's termination was based upon retaliation, awarded Petitioner more than $56,000.00 in attorney fees, as well as rendered a 47-page, across-the-board, ruling in Petitioner's favor, ordering her reinstatement to her position as an investigator, with full backpay. [4A; 227A]

Petitioner, nonetheless, fell victim to fraud by Respondents, who, inter alia, represented a lower expenditure of time in their request for attorney fees submitted to MSPB, and subsequently reflected a higher expenditure of time in their final bill to Petitioner, for corresponding work on the corresponding dates. [4-6A]

Respondents, who maintain offices in at least five (5) geographical locations (including Washington, D.C., Philadelphia and New York City) and draw revenue from a host of wealthy clients (including multi-million dollar corporations), walked away with all of the monies awarded as attorney fees (paid directly to Respondents by EEOC), as well as walked away with the bulk of the $30,000.00 plus dollar amount personally paid out by Petitioner prior to the award of attorney fees, which should have been refunded to Petitioner. [2-6A; 13A; 226A; 232A]

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1. Materials not included in the Appendix annexed hereto, but which appeared in the Appendix filed in the Court of Appeals shall be referred to as ["____ A"], or by identifying the document if not included herein.

Petitioner, a resident of Memphis, Tennessee, manned street demonstrations outside of Respondents' principal office in Philadelphia, Pennyslvania, in protestation of Respondents' continuous refusal to release her additional refund payment. [news article, *front page, The Philadelphia Tribune*, February 16, 1990 issue; front page, The Legal Intelligencer, April 4, 1990 issue; 8A; 31A; 43A; 176A; 8-13a][2]

Thereafter, for eleven (11) consecutive weeks, Petitioner manned street demonstrations outside of Respondents' office located at 1111 19th Street, N.W., Washington, D.C., where the fraudulent billing statements were formulated. [news article, pp. 8-9, Washington City Paper, September 21, 1990 issue; 3-8A; 31A; 176A; 8-13a]

Petitioner's claims of fraud having been committed by these licensed attorneys, were viewed in the legal community as a hands-off case, which precluded Petitioner from locating an attorney who was willing to bring legal action, on her behalf, against fellow attorneys. [1A]

Petitioner, appearing pro se, filed a multi-million dollar lawsuit in the Superior Court for the District of Columbia on October 5, 1990, requesting a jury trial and charging Respondents with breach of contract, deceit, fraud, and willful infliction of emotional distress. [1-20A]

Respondents immediately commenced forum shopping efforts to remove the action outside of the province of Washington, D.C., where the harm to Petitioner originated, and the forum shopping efforts resulted in Respondents tying up the dockets of three (3) different courts (District of Columbia Superior Court, Eastern District of Pennsylvania District Court, District of Columbia District Court). [3-6A; 23A; 44-51A; 239A]

Respondents (a total of 102 partners) filed a declaratory judgment action against Petitioner in the Eastern District of Pennsylvania on October 15, 1990, appealing to the District Court in Philadelphia to declare that they do not owe monies claimed by Petitioner, while

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2. Materials appearing in the Appendix to this petition will be referred to as ["___ a"]

simultaneously conceding therein that monies are owed to Petitioner. [23-34A]

Respondents then withheld service of process of their Pennsylvania complaint (mailed to Petitioner on October 23, 1990), which contained the identification of the numerous partners, who could not be identified by Petitioner, prior to Petitioner's receipt of the Pennsylvania complaint. [123-125A; 129A]

On October 26, 1990 (the same date upon which Petitioner received Respondents' Pennsylvania complaint), Respondents removed Petitioner's complaint from the Superior Court to the District of Columbia District Court, under 28 U.S.C. §1441(b), relating to removal of actions based upon diversity of citizenship. Three (3) defendants, who were unknown to Petitioner and who appeared as parties to Respondents' Pennsylvania action, were District of Columbia citizens upon removal, which barred removal of the action under §1441(b). [44-50A; 125A; oral argument transcript]

Respondents removed this action, representing, inter alia, that Petitioner's lawsuit was confined to the five (5) individuals named on the face of her complaint. [1A; 44-50A] Petitioner retained all partners practicing law under the firm name of Schnader, Harrison, Segal & Lewis, including the three (3) District of Columbia citizens. [21-22A; 227A]

The names of five (5) individuals, who were personally known by Petitioner, were reflected on the face of Petitioner's complaint, including the name of the senior partner who executed Respondents' agreement, on behalf of all partners, to provide Petitioner with legal representation. [1A, 22A; 124A; 227A]

Prior to filing her complaint, Petitioner made stringent (verifiable) efforts to amass the identification of the numerous partners. [123-124A] Petitioner's efforts were unsuccessful; therefore, Petitioner joined the remaining unknown partners by appending a copy of Respondents' 'agreement' to her complaint at the time of filing. [1A; 21-22A; 124A; 133A] By virtue of the provisions outlined in §41-108(a) of the D.C. Code, all partners, including partners who could not be identified by Petitioner on the face of the complaint, were joined in the October 5, 1990 civil action filed by Petitioner, including the three (3) District of Columbia citizens. [126A]

Respondents' delayed service of process of their Pennsylvania complaint (unveiling the numerous names), precluded Petitioner from amending her complaint in the Superior Court to reflect the names of the District of Columbia citizens prior to removal. [125A; 129A]

On November 8, 1990, Petitioner amended her complaint in the District of Columbia District Court, as a matter of right (prior to the filing of a responsive pleading), pursuant to Rule 15(a) of the Federal Rules of Civil Procedure (F.R.C.P.), reflecting therein the names of all partners (102) on the face of her amended complaint, including the three (3) D. C. citizens. [86A; 91-117A; 125A]

On November 14, 1990, pursuant to 28 U.S.C. §1447(c), which requires remanding a removed action for lack of subject matter jurisdiction, Petitioner filed with the District of Columbia District Court a motion to remand this action, and alerted the court of Respondents' declaratory judgment action, by appending a copy thereto. [118-146A]

On November 23, 1990, Petitioner filed with the Eastern District of Pennsylvania her motion to dismiss Respondents' declaratory judgment action, and alerted that court of the chain of events by appending thereto a copy of her Superior Court complaint, Respondents' notice of removal, as well as her motion to remand. [149-149(a)A]

The District of Columbia District Court delayed its ruling on Petitioner's motion to remand, while Respondents' Pennsylvania action was rapidly progressing to a trial scheduling date; therefore, on January 15, 1991, Petitioner filed with the District of Columbia District Court a motion for injunctive relief, appending thereto documentation reflecting all pretrial deadline dates relating to the Pennsylvania action, including the March 8, 1991 trial list date. [187-189A]

Within their January 23, 1991 memorandum in opposition to Petitioners' motion for injunctive relief, Respondents conceded that their Pennsylvania action represented a compulsory counterclaim to Petitioner's Superior Court complaint, as well as declared that "[they] will move . . . to transfer this action to Pennsylvania." [197A; 215A]

On March 6, 1991 (48 hours before Respondents' action was to be placed on the trial list in Pennsylvania) the District of Columbia

District Court denied Petitioner's motion for injunctive relief, without citing any authority for the denial thereof, or addressing the provisions of Rule 13(a) of the F.R.C.P., which bars forum shopping. [171-174A; 5-7a] Within the same interlocutory memorandum and order, the District Court denied petitioner's motion to remand, based upon two (2) cases which were unrelated to the facts of Petitioner's action, and without addressing the provisions of Rule 15(a) of the F.R.C.P., 28 U.S.C. §1441(b), §1447(c), §1447(e), or §41-108(a) of the D.C. Code, relating to the District of Columbia's Uniform Partnership Act. [92A; 118A; 126A; 129-130A; 171-174A; 5-7a]

The District Court provided a copy of the adverse ruling to the Chief Judge in the Eastern District of Pennsylvania. [173-174A; 6-7a] Three (3) weeks later (in a memorandum and order entered on March 27, 1991) the Chief Judge addressed the Rule 13(a) bar, and ruled that Respondents' declaratory judgment action was a compulsory counterclaim to Petitioner's Superior Court complaint, before the action was removed from the Superior Court. [175-182A; 8-13a] Accordingly, the Chief Judge granted Petitioner's motion to dismiss. [175-182A; 8-13a] Thereafter, Respondents never filed a compulsory counterclaim to Petitioner's District of Columbia complaint. [226-234A]

Petitioner filed a timely notice of appeal, in person, in the District Court, on March 29, 1991, from the March 6, 1991 memorandum and order, pursuant to 28 U.S.C. §1292(a) (1), which allows for appeals, as a matter of right, from interlocutory orders denying injunctive relief. [183-184A; 257A] Petitioner simultaneously appealed both adverse rulings contained within the order, and upon her return to Memphis, she received the ruling from Pennsylvania. [183-184A; 257A]

Upon filing her notice of appeal, Petitioner simultaneously filed additional pleadings, including a 22-page Affidavit Requesting Disqualification of the Presiding Judge for Personal Bias and Prejudice, as well as her amended statement of genuine issues (referenced in the March 6, 1991 memorandum and order), which were never entered into the District Court's docket. [173A; 257-258A]

It was uncovered during the course of the appeal proceedings that the pleadings were never entered into the court's docket, as well

as uncovered that the Affidavit Requesting Disqualification, together with Petitioner's motion for injunction pending appeal, were found in the Judge's Chambers by judicial support personnel on September 30, 1992 (1½ years after the pleadings were filed by Petitioner). [257-258A] It was further uncovered that the District Court had ruled on the undocketed pleadings ten (10) months before the pleadings were found in the Judge's Chambers. [223-225A; 257-258A]

While the foregoing pleadings were recovered in the Judge's Chambers, Petitioner's undocketed amended statement of genuine issues apparently disappeared, and the disappearance thereof occurred in the face of the District Court having carved away Petitioner's 4-count complaint, via its summary judgment/dismissal ruling in Respondents' favor, which followed with the denial of Petitioner's motion for certification of the order, thereby barring Petitioner from taking an appeal from the order. [257-258A]

The Court of Appeals, being in possession of a copy of Petitioner's Affidavit Requesting Disqualification of the Presiding Judge, denied Petitioner's motion for injunction pending appeal, and simultaneously stripped Petitioner's appeal of the injunctive relief issue, via its March 9, 1992 Order, by granting, in part, Respondents' motion to dismiss the appeal as moot. [235-236A] The court, using the ruling from the Eastern District of Pennsylvania as its basis, stripped the injunctive relief issue, without addressing the undisputed fact that the need for injunctive relief still exists, inasmuch as Respondents have not abandoned their forum shopping efforts. [207-222A; 235-236A]

The remainder of Respondents' motion to dismiss (relating to Respondents' claim that the court lacked jurisdiction to review the remand issue) was referred to a merits panel for briefing and oral argument, and the court (without articulating any reasoning or basis) simultaneously appointed, an amicus curiae, sua sponte, "to argue the appeal on behalf of [Petitioner]," to address the issue raised in Respondents' motion to dismiss. [207-211A; 235-237A]

The issue earmarked to be addressed by amicus, had already been addressed by Petitioner in her memorandum in opposition to Respondents' motion to dismiss, wherein she stated (citing authority) that courts have held that when appellate jurisdiction is established under statutes authorizing appeals from interlocutory injunctive

orders, the entire order, and not simply the propriety of the injunctive relief, is before the court for review. [216A]

On the heels of the Court of Appeals having stripped the injunctive relief issue, Respondents notified the District of Columbia District Court that Respondents were prepared to proceed "promptly" with a Section 1404(a) motion to transfer this action to the Eastern District of Pennsylvania, and simultaneously conceded to the District Court that they "have always intended to seek a Section 1404(a) transfer [of Petitioner's action] to the Eastern District of Pennsylvania." [237-240A]

Amicus, within his 32-page brief, did not broach Respondents' forum shopping efforts, nor expend any substantial energies in supporting Petitioner's arguments (e.g. that the Court of Appeals had jurisdiction to review Petitioner's appeal under 28 U.S.C. §1292(a)(1)); rather, amicus brought forward far-afield 'suggested' avenues for appellate review, including 28 U.S.C. §1291, which relates to final orders, as opposed to interlocutory orders. [7-18 Amicus Brief]

Respondents, within their own brief, categorized amicus' argument as half-hearted, and pointed out that "[amicus] flatly concedes that if the denial of this injunction were the only issue before this court by [Petitioner] the disposition would be obvious: the appeal would be dismissed as moot." [16, 36 Appellees' Brief; 8-9 Amicus' Brief]

Amicus interjected statements throughout his brief, which conflicted with Petitioner's position. Petitioner alerted the court (via the Form 72, notifying the court that she would present oral argument), that she and amicus had "proceeded through this appeal independently, without any interchanges regarding the context of their respective briefs, and/or without any coordination, irrespective of [Petitioner's] efforts to establish a line of communication." Ten (10) days later, the court (via its October 26, 1992 Order) realigned its oral argument proceedings, replacing Petitioner with amicus, by allotting amicus double the time than that allotted to Petitioner; allowing amicus to make the opening statement, in lieu of Petitioner; and allowing amicus to present his argument before Petitioner.

Petitioner was compelled to devote most of her oral argument in

'arguing against the amicus' baseless assertions, which conflicted with Petitioner's averments, and the repetition of amicus' baseless assertions, brought forth Petitioner vigorously arguing that amicus was "insistent upon throwing [Petitioner] into the arena of perjury." [oral argument transcript]

The Court of Appeals embraced the amicus' far-afield §1291 suggested avenue for appellate review, and then used this unrelated statute as its authority for dismissing Petitioner's appeal for lack of jurisdiction. [1-4a]

The Opinion is silent of numerous facts, including the facts that the appeal was taken under 28 U.S.C. §1292(a)(1); that the District Court denied Petitioner injunctive relief; that the memorandum and order reflecting the denial of injunctive relief, together with the denial of remand concurrently contained therein, is the memorandum and order upon which the appeal was taken. [171-174A; 183-184A; 3-5 Appellant's Brief]

The Opinion is silent of any reference to the District Court's failure to docket Petitioner's pleadings; the disappearance of Petitioner's pleadings; as well as silent of the District Court having ruled upon Petitioner's undocketed pleadings. [223-225A; 257-258A]

The Opinion is also silent of the fact that Respondents are engaging in forum shopping efforts, and were prepared (irrespective of the ruling from Pennsylvania) to pitch this action to the Eastern District of Pennsylvania, in the face of the Court of Appeals' scheduling order for briefing and oral argument. [237A; 239A]

The Opinion is equally silent of any reference to Respondents' motion to dismiss, as well as silent of the fact that Respondents did not declare until April 22, 1991 (via their motion to dismiss) that they would not appeal the Pennsylvania ruling, and that Respondents' declaration was made after the appeal was already taken. [183-184A; 207-211A] Based upon this fact, even the court appointed amicus conceded that at the time the appeal was taken, the appeal was properly characterized as an appeal. [8 Amicus Brief]

There was no mention, within the Opinion, that court personnel verbally instructed amicus to address the applicability of 28 U.S.C. §1447(e), which brought forth specific arguments reflected within

amicus' brief; to wit, "the District Court erred in failing to consider a remand in light of 28 U.S.C. §1447(e) . . . [and] . . . this court may, sua sponte, review this case as a violation of subject matter jurisdiction." [5, 7, 28 Amicus Brief]

The Court of Appeals, irrespective of the instructions communicated to amicus, declined to use its inherent power to cure defects in subject matter jurisdiction, and disregarded the District Court's deliberate failure to adhere to the provisions of 28 U.S.C. §1447(c) and §1447(e), in refusing to remand Petitioner's action. [5-7a]

The court also disregarded the District Court having deliberately ignored the facts surrounding Petitioner's action. The Court of Appeals, like the District Court, deliberately interposed the testimony of another plaintiff, in another case, as being the testimony of Petitioner; to wit, J. Edward Day (a former United States Postmaster General, whom the court described as an able and experienced attorney), who filed a lawsuit in the District of Columbia against a partnership, wherein he was a partner in the law firm, and wherein he claimed, in the absence of having any District of Columbia citizens as defendants, that the partnership, itself, fell within the arena of citizenship because it was doing business in the District of Columbia community. Day v. Avery, 548 F.2d 1018 (D.C. Cir. 1976), cert. denied, 431 U. S. 908 (1977) The lower courts deliberately disregarded the fact that the circumstances surrounding Petitioner's action do not embrace the case of Day, supra, as well as disregarded the fact that Petitioner is not J. Edward Day.

The Court of Appeals ignored the District Court's deliberate disregard of the provisions of 28 U.S.C. §1441(b), §41-108(a) of the D.C. Code, and Rule 13(a) and 15(a) of the Federal Rules of Civil Procedure. The Court of Appeals further ignored the District Court's arbitrary denial of injunctive relief to Petitioner.

The Court of Appeals, itself, deliberately disregarded provisions of 28 U.S.C. §1292(a)(1), by dismissing Petitioner's appeal for lack of jurisdiction, as well as deliberately disregarded 28 U.S.C. §1654, by denying Petitioner her right to proceed with the appeal on her own behalf, unhampered by an appointed amicus.

The Court of Appeals disregarded Petitioner's brief and oral argu-

ment, in deference to the brief and argument of amicus, and deemed the statements of amicus, as being the statements of Petitioner. [1-4a]

In reality, amicus acted as counsel for Petitioner, although petitioner did not request a 'counsel' in disguise, nor request the appointment of amicus.

The amicus displaced Petitioner as the appellant, and the appointment of amicus had a prejudicial effect upon the disposition of Petitioner's appeal.

The Per Curiam Opinion is based upon erroneous facts, which were misstated, rearranged out of sequence, and misrepresented, without including crucial facts of this case. The record on appeal, without the need for clarification or qualification, reflects that the Opinion is defective on its face.

REASONS FOR GRANTING THE WRIT

I.

THE EXTREME DEPARTURE BY THE LOWER COURT FROM THE ACCEPTED/USUAL COURSE OF JUDICIAL PROCEEDINGS AND THE WHOLESALE DISREGARD OF STATUTORY PROVISIONS AND FEDERAL RULES, LEAVE FUTURE LITIGANTS VULNERABLE TO HAVING COURTS DISREGARDING STATUTES AND RULES WHEN LITIGANTS HAUL THEIR ATTORNEYS INTO COURT RAISING CLAIMS OF HAVING FALLEN VICTIM TO FRAUDULENT STATEMENTS

The District of Columbia Circuit flagrantly and deliberately disregarded statutory provisions enacted by Congress, as well as deliberately disregarded the Federal Rules of Civil Procedure, in deference to one hundred four (104) licensed attorneys, who are appearing as defendants in a multi-million dollar lawsuit filed by a former client, wherein the client (Petitioner) raises claims that Respondents, inter alia, formulated fraudulent billing statements, after Petitioner retained Respondents for legal representation.

Although Petitioner is appearing individually as plaintiff in this civil action, Petitioner represents the masses of American citizens throughout this nation (young and elderly, poor and wealthy), who utilize the legal services of attorneys. Petitioner also represents multi-million to billion dollar corporations, which expend revenue for legal services throughout this nation, and suffice it to say, given the widespread utilization of legal services throughout this nation, there is a real likelihood that the claims raised by Petitioner, will reappear any day, within any court, throughout this nation.

The bold disregard of statutory provisions by the lower courts in deference to the licensed attorneys appearing as defendants in this case, repudiates the power of Congress' enactment of the statutes, as well as undermines the integrity of the judicial system.

Every court throughout this nation has a responsibility to Congress, as well as to all litigants to safeguard statutory provisions, and adhere to such provisions, irrespective of the status of the litigants (including licensed attorneys who appear as defendants).

Congress did not enact statutory provisions for a select group of individuals, and the lower courts, in essence, are attempting to override the power of Congress by flagrantly ignoring statutory provisions which were enacted by Congress, in deference to Respondents.

Petitioner filed an appeal under 28 U.S.C. §1292(a)(1), as a matter of right, after the District Court denied her motion for injunctive relief, as well as simultaneously denied her motion to remand her removed action to the District of Columbia Superior Court.

In lieu of adhering to the provisions of §1292(a)(1), and safeguarding Petitioner's right to appeal under this statute, the Court of Appeals, aided by amicus curiae, appointed, sua sponte, redirected the appeal to an unrelated statute, 28 U.S.C. §1291, and then dismissed the appeal for lack of jurisdiction. This Court has granted certiorari of another appeal dismissed by the District of Columbia Circuit for lack of jurisdiction, when the appeal was taken from an interlocutory order. See Nixon v. Fitzgerald, 457 U.S. 731 (1982).

Petitioner is appearing pro se, and amicus was purportedly appointed to argue on behalf of Petitioner. In reality, amicus shrewdly argued on behalf of Respondents and served as a subterfuge to

block the merits of the appeal. The Court of Appeals deliberately disregarded the provisions under 28 U.S.C. §1654, by having denied Petitioner her statutory right to argue her appeal on her own behalf.

Courts have traditionally regarded pro se representation as a fundamental right, irrespective of the status of the litigant. See Traguth v. Zuck 710 F.2d 90, 94 (2nd Cir. 1983), wherein the court stated: "Under 28 U.S.C. §1654, a party to a civil action in federal court has the right to appear pro se. The right to self-representation is a right of high standing, not simply a practice to be honored or dishonored by a court depending on its assessment of the desiderata of a particular case." (quoting from O'Reilly v. New York Times Co., 692 F.2d 863, 867 (2nd Cir. 1982)

The court, in Traguth, supra, further stated that the court is obligated to protect pro se litigants from forfeiting important rights. Ironically, the District of Columbia Circuit, itself, has declared that pro se representation is a fundamental right, recognized by Congress, and that such right should not be interfered with by an amicus who plays too "conspicuous" a role. See United States v. Dougherty, 473 F.2d 1113, 1125 (D.C. Cir. 1972)

Noticeably, the District of Columbia Circuit's holding in Dougherty, supra, did not involve claims relating to fraudulent billing statements, nor involve licensed attorneys appearing as defendants.

The manner in which the lower court strategically maneuvered its way to the ultimate ruling of no jurisdiction, undermines the sanctity as well as the integrity of the judicial system.

In addition to the lower court having misrepresented the facts of this case within its Opinion, the court went to the extreme of erroneously representing, within the Opinion, that the injunctive relief issue was moot when the appeal was taken. The record on appeal overwhelmingly demonstrates that the injunctive relief issue was not moot when the appeal was taken, and is still not moot, even to this date. See Powell v. McCormack, 395 U.S. 486 (1969); United States v. W. T. Grant Co., 345 U.S. 629; Codex Corp. & Yellow Freight, Inc. v. Milgo Electronic Corp. & International Communications Corp., 553 F.2d 735 (1977), wherein the courts, including this Court, refused to apply the mootness doctrine where it was apparent,

as is true in the instant case, that there was "some cognizable danger of recurrent violation." Respondents' continuous forum shopping efforts, well documented in the record on appeal, clearly negate any erroneous determination that a need for injunctive relief does not exist in this case.

There is nothing contained within the four corners of the Opinion, which gives insight as to the underlying reason for the lower court having reflected blatant misrepresentations therein. In the absence of judicial explanation, one can only draw the conclusion that the misrepresentations were made based upon the 'nature' of Petitioner's complaint against these licensed attorneys. Conspicuously, the 'nature' of Petitioner's claims against Respondents was omitted from the Opinion.

The Opinion (which obviously cannot withstand close examination) presents a real danger for future litigants who file similar actions against licensed attorneys within the District of Columbia Circuit. The Opinion obviously leaves future litigants vulnerable to having similar defective adverse Opinions rendered, as well as vulnerable to having the lower court deliberately abort their statutory right to appeal.

In dismissing the appeal, the lower court closed its eyes to the District Court's deliberate disregard of Rules 13(a) and 15(a) of the Federal Rules of Civil Procedure, as well as closed its eyes to the District Court's deliberate disregard of 28 U.S.C. §1441(b), §1447(c), §1447(e), and §41-108(a) of the D.C. Code.

Licensed attorneys are governed by the same laws as are other citizens in the United States, and licensed attorneys, who appear as defendants, are governed by the same Federal Rules, as well as statutory provisions, as are other litigants.

Congress has not authorized the District of Columbia Circuit to distinguish attorneys, who appear as defendants in cases related to fraudulent billing statements, from other litigants, nor authorized that circuit to set aside statutory provisions in deference to attorneys.

The lower courts should not be allowed to override the Federal Rules and statutes enacted by Congress, in deference to Respondents. The lower courts' rulings clearly send forth a resounding message

to Congress, as well as to the entire nation, that Federal Rules and statutes do not apply to attorneys who appear as defendants in actions filed by their clients relating to fraudulent billing statements.

This Court, in Schlagenhauf v. Holder, 379 U.S. 104, (1964), granted certiorari to resolve the validity and construction of a Federal Rule. In accordance with the principles enunciated in that case, this Court should grant certiorari in this case, to ensure the uniform adherence to and application of the Federal Rules. To deny review of this case will leave the lower courts with unbridled latitude to disregard and misapply statutory provisions, as well as the Federal Rules regulated by this Court. See also Southern Construction Co. v. Pickard, 371 U.S. 56 (1962), wherein this Court granted certiorari to consider the applicability of Rule 13(a); and Granny Goose Foods, Inc. v. Teamsters, 415 U.S. 423 (1974), which involved a review by this Court to determine the proper interpretation of a federal statute.

This case should be utilized by this Court as an avenue to reaffirm that the Federal Rules were not promulgated to undergo 'pick' and 'choose' application by the courts, as well as used as an avenue to reinforce the power of Congress' enactment of the statutes.

The lower court, in rendering its Opinion, shirked its supervisory duty, by backing away from the District Court's lack of subject matter jurisdiction over Petitioner's action. The lower court's failure to exercise its supervisory duty leaves future litigants, who bring similar claims against attorneys, vulnerable to proceeding to trial before a trier of fact who has no subject matter jurisdiction over the action, thereby rendering any award coming forth from a jury as unenforceable under the law, because the trier of fact lacked subject matter jurisdiction of the action. The lower court, nonetheless, declined to exercise its inherent power to cure defects in subject matter jurisdiction, which glaringly exists in this case.

This Court has long recognized the supervisory power of appellate courts over the district courts to ensure "proper judicial administration in the federal system." LaBuy v. Howes Leather Co., 352 U.S. 249, 259-60 (1957) In LaBuy, supra, this court, once again, granted certiorari to determine the proper administration of the F.R.C.P.

Significantly, the D.C. Circuit has, heretofore, adhered to the principles outlined in LaBuy, supra, as well as Schlagenhauf, supra, in exercising its appellate supervisory powers. In Colonial Times, Inc. v. Gasch 509 F.2d 517, 523 (D.C. Cir. 1975), the court granted a writ of mandamus to correct the district court's erroneous view of Rule 30, F.R.C.P., and in so ruling, the Chief Judge stated: "some egregious errors by the trial court may so misdirect the trial that a failure to immediately correct [them] will force the parties through a useless trial, only to be ordered to a re-trial after appellate reversal of the final judgment." Accord: In Re Furlong, 885 F.2d 815 (11th Cir. 1989).

To leave the Court of Appeals' Opinion in tact, in the wake of blatant disregard of federal rules and statutes, will in essence, sabotage Petitioner's lawsuit, which in turn will allow other courts to follow suit, by disregarding lack of subject matter jurisdiction, and thereby causing an upheaval within the judicial system.

This case, which obviously is not one found in the courts everyday, has been tainted within the judicial system at every turn, even to the point where the lower court totally disregarded the apparent disappearance of Petitioner's amended statement of genuine issues, as well as disregarded the District Court's failure to docket Petitioner's pleadings, and its having rendered rulings on such pleadings.

To allow the disappearance of pleadings, and allow filed pleadings to by-pass entry into the court's docket, as well as allow rulings to be made on undocketed pleadings, will cause the public-at-large to be at risk.

This case undoubtedly represents a drastic departure by the lower courts from the accepted and/or usual course of judicial proceedings, and the extreme of the deviation, without doubt, warrants this Court invoking its supervisory power.

This case, which obviously met with disfavor within the District of Columbia Circuit, should be utilized by this Court as an avenue to communicate to every court throughout this nation, the 'stance' of the highest court in the nation, regarding this kind of case, to ensure that impartial judicial forums will be accessible to future litigants who bring similar claims against their attorneys.

If clients, who haul their attorneys into court on claims involving fraudulent billing statements, cannot be accorded the same protection under the Federal Rules of Civil Procedure and statutes enacted by Congress, as any other civil litigant, fraudulent billing statements can become rampant in the legal community throughout this entire nation, leaving citizens, as well as giant corporations, totally defenseless.

II.

THE COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT DEPARTED FROM THE ACCEPTED/USUAL COURSE OF JUDICIAL PROCEEDINGS AND SANCTIONED THE DISTRICT COURT'S DEPARTURE THEREFROM, BY FLAGRANTLY ABORTING PETITIONER'S APPEAL WITHOUT JUSTIFICATION AND DEPARTING FROM HOLDINGS MADE IN OTHER CASES, AS WELL AS DELIBERATELY REFUSING TO EXERCISE ITS INHERENT POWER TO CURE DEFECTS IN SUBJECT MATTER JURISDICTION WHICH PATENTLY EXISTS IN THIS CASE

The Court of Appeals departed from its own holdings, as well as from this Court's holdings and holdings made within other circuits, in dismissing Petitioner's appeal for lack of jurisdiction. The inconsistency reflected by the ruling in this case, is amply demonstrated in comparing the District of Columbia Circuit's decisions with those of other circuits, as well as with the precedents set forth by this Court.

In Deckert v. Independence Shares Corp., 311 U.S. 282, 287 (1940), this Court enunciated the well established principle that an appellate court which has jurisdiction over an interlocutory order containing injunctive relief may reach and decide other issues in that order, even where the other issues would not be reviewable independently by interlocutory appeal.

The Deckert, supra, principle, therefore, afforded the Court of Appeals ample precedent for invoking its jurisdiction under §1292(a)(1) to review and decide both issues contained in the District

Court's March 6, 1991 memorandum and order. Had the lower court adhered to the principle established in Deckert, it would have done "what plainly ought to [have been] done," (i.e., vacated the District Court's order, with instructions to remand this action to the Superior Court) inasmuch as the case was lawfully before the court. Mercury Motor Express, Inc. v. Brinke, 475 F.2d 1086, 1091 (5th Cir. 1973) See also Lou J. D'Orio v. County of Delaware, 592 F.2d 681 (3rd Cir. 1978); McNally v. Pulitzer Publishing Co., 532 F.2d 69 (8th Cir. 1976); Barret v. Smith, 530 F.2d 829 (9th Cir. 1975); Kohn v. American Metal Climix, Inc., 458 F.2d 255 (3rd Cir. 1971), cert. denied, 409 U.S. 874 (1972); Erving v. Virginia Squires Basketball Club, 468 F.2d 1064 (2nd Cir. 1972); and Semmes Motors, Inc. v. Ford Motor Co., 429 F.2d 1197 (2d Cir. 1970), wherein the courts uniformly held that once appellate jurisdiction was properly invoked under 28 U.S.C. §1292(a)(1), the entire order, not merely the propriety of injunctive relief, was before the court for review.

Significantly, the District of Columbia Circuit has, heretofore, adhered to the Deckert, supra, principle, by invoking its jurisdiction over ancillary issues contained in interlocutory orders relating to injunctive relief. See Wagner v. Taylor, 836 F.2d 578 (D.C. Cir. 1987), where the court stated: "[j] urisdiction of the interlocutory appeal is in large measure jurisdiction to deal with all aspects of the case . . ." The Court of Appeals, nonetheless, declined to apply the holding in Wagner, supra, to Petitioner's case.

The most noteworthy of the District of Columbia Circuit cases, however, is E. P. Hinkel & Co. v. Manhattan Co., 506 F.2d 201 (D.C. Cir. 1974), wherein the court retained jurisdiction over a summary judgment issue raised in the case, although the injunctive issue was moot. In Hinkel, supra, like the instant case, the appeal was invoked under 28 U.S.C. §1292(a)(1); however, unlike this case, the court reviewed the entire order. Other District of Columbia cases have been decided in accord; see Noxell Corp. v. Firehouse No. 1 Bar-B-Que Restaurant, 760 F.2d 312 (D.C. Cir. 1985); Lee v. Ply-Tem Industries, Inc., 593 F.2d 1266 (D.C. Cir. 1979).

Hinkel, supra, is particularly noteworthy inasmuch as the Court of Appeals attempted to distinguish this case from the instant case;

however, the salient fact remains that the court retained jurisdiction over the summary judgment issue, which was not independently reviewable.

It is very clear, therefore, that the District of Columbia Circuit recognizes the propriety of reviewing an entire interlocutory order under §1292(a)(1) and, accordingly, has been in conformance with the majority of the remaining circuits. The divergence in this case obviously surfaced based upon the 'nature' of this case.

By dismissing this appeal for lack of jurisdiction, the District of Columbia Circuit not only departed from the established Deckert principle, but also departed from its holdings relating to injunctive relief issues. The Court of Appeals deviated from the holdings in Hinkel, supra, and further deviated from its recent holding in Christian Knights of the Ku Klux Klan v. District of Columbia, 972 F.2d 365 (D.C. Cir. 1992).

Christian Knights, supra, involved the issue of injunctive relief which was moot; however, the court found that there was a reasonable likelihood that the complaining party would re-encounter the problem which necessitated the initial request for injunctive relief. Accordingly, the Court of Appeals not only retained jurisdiction over the injunctive issue, but the court affirmed the need for injunctive relief by issuing a permanent injunction.

There is no doubt that the instant case is clearly analagous to Christian Knights, supra, inasmuch as Respondents' forum shopping efforts have not ceased, and will not cease, absent the remand of this action to the Superior Court or the granting of injunctive relief.

Within the District Court's March 6, 1991 memorandum and order, denying Petitioner injunctive relief and simultaneously denying her motion to remand, the District Court openly exposed its predisposition to transferring this action to the Eastern District of Pennsylvania (the forum selected by Respondents for filing their compulsory counterclaim to Petitioner's Superior Court complaint) rather than granting Petitioner injunctive relief or granting her motion to remand this action to the Superior Court. Elementary principles of logic dictate that the District Court could not transfer this action to Pennsylvania, and simultaneously remand this action to the District

of Columbia Superior Court. Therefore, within the eyes of the District Court, the motion for injunctive relief and motion to remand were one in the same. The District Court illuminated within its memorandum and order that it sanctioned Respondent's forum shopping, which further underscores Petitioner's need for injunctive relief.

The Court of Appeals disregarded the District Court's failure to cite any authority for having denied Petitioner injunctive relief, which leaves the District Court with wide latitude in rendering future at-will denials in similar cases.

The provisions of Rule 13(a) are designed to bar litigants from engaging in forum shopping. If the rulings by the lower courts are left undisturbed, this will cause future litigants, who bring similar claims against their attorneys, to be denied injunctive relief from forum shopping by their opponents, or to be denied whatever need exists for the injunctive relief. The rulings, if left undisturbed, will allow unbridled forum shopping by future litigants.

The Court of Appeals' Opinion obviously conflicts with other circuits relating to the issue of whether the denial of Petitioner's motion to remand was reviewable prior to final judgment. In wide contrast to the Opinion, it has long been established that a remand issue contained within an interlocutory order relating to injunctive relief is, in fact, reviewable.

In Mayflower Industries v. Thor Corp., 184 F.2d 537, 539 (3rd Cir. 1950), cert. denied, 341 U.S. 903 (1951), the court held that "[a]lthough the denial of a motion to remand itself would not support an interlocutory appeal, the question of removability is jurisdictional and therefore is before [the court] for consideration once it appears that the case is properly before [the court] for review of an appealable order." Accord: O'Halloran v. University of Washington, 856 F.2d 1375 (9th Cir. 1988); Takeda v. Northwestern National Life Insurance Co., 765 F. 2d 815 (9th Cir. 1985); Beech-Nut, Inc. v. Warner Lambert Co. 480 F.2d 801 (2nd Cir. 1973); Kysor Industrial Corp. v. Pet, Inc., 459 F.2d 1010 (6th Cir.), cert. denied, 409 U.S. 980 (1972); Johnson v. Butler Brothers, 162 F.2d 87 (8th Cir. 1947).

Similarly, in the Honorable Justice White's dissent to the denial

of certiorari in Alligator Co. v. La Chemise LaCoste, 421 U.S. 937, 938 (1975), he underscored the need for adherence to the principles outlined in the above cases by therein stating: "[it] would appear that jurisdictional questions should be reviewed at the first available opportunity, and I perceive no good reason for not permitting the removal issue to be raised in connection with an appeal from the denial of a preliminary injunction . . ."

Moreover, in Shamrock Oil & Gas Corp. v. Sheets, 313 U.S. 100 (1941), this Court established the well settled principle that removal statutes are to be strictly construed against removal jurisdiction. The facts and circumstances surrounding the case at hand, dictate that the Court of Appeals should have remanded Petitioner's action to the District Court, with instructions to remand this action for lack of subject matter jurisdiction. The Court of Appeals' failure to remand the action was clearly a divergence from the principles enunciated in Shamrock Oil, supra.

Moreover, the Court of Appeals' failure to invoke its inherent supervisory power to cure defects in subject matter jurisdiction existing in this action, represents a distinct departure from the principles outlined by this Court in LaBuy, supra, and Schlagenhauf, supra.

By failing to exercise its jurisdiction over this case, the Court of Appeals has failed to adhere to the administrative and judicial schemes of the removal statutes, and has, therefore, sanctioned the District Court's proceeding with this action, notwithstanding the District Court's lack of subject matter jurisdiction of this action.

Given the Court of Appeals' unexplained departure from precedents established by this Court and other circuits, as well as its departure from its own holdings within the District of Columbia Circuit, one can only draw a conclusion therefrom that the grave departure was based upon the 'nature' of Petitioner's action against Respondents.

This Court should grant certiorari to resolve the conflict in the circuits, as well as exercise its supervisory power to prevent manifest injustice in this case.

CONCLUSION

No court within this nation should be allowed to use the judicial system as a haven for attorneys, and for the various reasons outlined herein, this petition for certiorari should be granted.

Respectfully submitted,

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March 3, 1993

APPENDIX

Notice: This opinion is subject to formal revision before publication in the Federal Reporter or U.S.App.D.C. Reports. Users are requested to notify the Clerk of any formal errors in order that corrections may be made before the bound volumes go to press.

Filed Dec. 11, 1992 Issuance of Mandate stayed pending filing of Petition for Writ of Certiorari

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

Argued November 16, 1992 Decided December 11, 1992

No. 91-5089

Jacquelyne L. Neal, Appellant

v.

William H. Brown, III, et al, Appellees

Appeal from the United States District Court for the District of Columbia (Civil Action No. 90-02677)

Jacquelyne L. Neal, appellant *pro se*.

Edward W. Mullinix, with whom *Thomas E. Patton*, was on the brief, for appellees.

William F. Fox, Jr. (appointed by this Court), for *amicus curiae*.

Before Wald, Silberman and D. H. Ginsburg, *Circuit Judges*.

Opinion for the Court *Per Curiam*.

Bills of costs must be filed within 14 days after entry of judgment. The court looks with disfavor upon motions to file bills of costs out of time.

Per Curiam: Stripped to its esentials, this case presents the question whether a federal district court's denial of a motion to remand is subject to interlocutory review. We hold that it is not and accordingly dismiss this appeal for lack of jurisdiction.

Although the disposition of this appeal is straightforward, its path to this court was not. Appellant Jacquelyne Neal, a citizen of Tennessee, initially brought this action in the Superior Court of the District of Columbia on October 5, 1990. She named as defendants the law firm of Schnader, Harrison, Segal & Lewis, a partnership in the District of Columbia, along with five individuals. Ten days later, the law firm, or more precisely, some of it partners, filed an action against Ms. Neal in the U.S. District Court for the Eastern District of Pennsylvania. On October 26, 1990, defendants filed a notice of removal in the U.S. District Court for the District of Columbia under 28 U.S.C. § 1441(b), which permits removal when there is complete disversity of citizenship and no defendant properly joined and served as a citizen of the state in which the action is brought. As it turns out, none of the individuals named in Ms. Neal's complaint was a citizen of the District of Columbia, and under D.C. law, a partnership cannot be sued as an entity. *Day v. Avery,* 548 F.2d 1018, 1022, (D.C. Cir. 1976), *cert. denied,* 431 U.S. 908 (1977).

Ms. Neal, who filed this action *pro se,* was understandably not aware of these intricacies of subject matter jurisdiction and removal. After receiving the defendants' notice of removal, she amended her complaint to add other members of the partnership, three of whom were, in fact, citizens of the District of Columbia. She then moved to remand to the D.C. Superior Court. Some time later, she sought to enjoin the defendants from pursuing their action against her in Pennsylvania. This motion for an injunction eventually became moot when the federal court in Pennsylvania dismissed defendants' action there as a compulsory counterclaim to Ms. Neal's action here. This left for determination only Ms. Neal's motion for remand, which the district court below denied. It is this denial that Ms. Neal now appeals.

Her appeal is premature. As a general matter, federal courts of

appeals have jurisdiction only over "final decisions" of the district courts. 28 U.S.C. § 1291. The Supreme Court has defined as "final" only a decision that "'ends the litigation on the merits and leaves nothing for the court to do but execute the judgment.'" *Coopers & Lybrand v. Livesay*, 437 U.S. 463, 467 (1978) (*quoting Catlin v. United States*, 324 U.S. 229, 233 (1945)). The decision to deny the remand clearly does not end the litigation, but merely determines that it will proceed in federal court. In holding that a denial of a motion to remand is not appealable under § 1291, we are in accord with every other federal court of appeals that has addressed this issue. *See, e.g., Estate of Bishop v. Bechtel Power Corp.*, 905 F.2d 1272 (9th Cir. 1990); *Rohrer, Hibler & Replogle, Inc. v. Perkins*, 728 F.2d 860, 861-62 (7th Cir.), *cert. denied*, 469 U.S. 890 (1984); *Poirrier v. Nicklos Drilling Corp.*, 648 F.2d 1063, 1064-65 (5th Cir. 1981); *Three J Farms v. Alton Box Board Co.*, 609 F.2d 112, 113 (4th Cir. 1979), *cert. denied*, 445 U.S. 911 (1980); *Aberle Hosiery Co. v. American Arbitration Ass'n*, 461 F.2d 1005, 1006 (3d Cir. 1972); *Brough v. United Steelworkers of America*, 437 F.2d 748, 749-50 (1st Cir. 1971); *Wilkins v. American Export-Isbrandtsen Lines, Inc.*, 401 F.2d 151, 151 (2d Cir. 1968); *see also* 15A Charles Wright, Arthur Miller & Edward Cooper, Federal Practice and Procedure § 3914.11, at 697 (3d ed. 1992) ("One aspect of appealing orders as to removal and remand remains blessedly simple. An order denying remand is not final.").

Ms. Neal and *amicus curiae*, appointed by this court, have suggested several other avenues by which this court might take jurisdiction, some of them quite creative, but all of them equally unavailing. The denial of a motion to remand does not fall within the collateral order doctrine, under which a "'small class' of decisions [is] excepted from the final-judgment rule," *Coopers & Lybrand v. Livesay*, 437 U.S. 463, 468 (1978) (*citing Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541 (1940)), because such a denial does not "render impossible any review whatsoever." *Firestone Tire & Rubber Co., v. Risjord*, 449 U.S. 368, 376 (1981). *See e.g. Estate of Bishop v. Bechtel Power Corp.*, 905 F.2d at 1274; *Rohrer, Hibler & Replogle, Inc.*, 728 F.2d at 861-62. Nor can we exercise pendent appellate jurisdiction over the remand question under 28 U.S.C. § 1292, which provides for interlocutory review of orders dealing with

injunctions, as Ms. Neal's motion for injunctive relief was moot even before she filed this appeal. *See Rodriguez v. Handy*, 802 F.2d 817, 821 (5th Cir. 1986); *Robert Stigwood Group Ltd. v. Hurwitz*, 462 F.2d 910, 914 & n.7 (2d Cir. 1972); *cf. E. P. Hinkel & Co. v. Manhattan Co.*, 506 F.2d 201, 204 (D.C. Cir. 1974) (court retained jurisdiction to review grant of summary judgment after injunction became moot where only issue remaining for determination by district court was damages).[1]

Appeal dismissed.

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[1] We have considered and rejected Ms. Neal's other proposed bases for this court's exercise of jurisdiction over her appeal, including the writ of mandamus under the All Writs Act, 28 U.S.C. § 1651, and our inherent power to question, *sua sponte*, defects in subject matter jurisdiction. We do not believe either theory warrants extensive discussion here.

Because we lack jurisdiction over this appeal, we do not reach the merits of whether the remand was proper. In that regard Ms. Neal urged us to consider whether her amended complaint should relate back to her original filing for purposes of the removal statute and whether the district court was required to consider 28 U.S.C § 1447(e), which deals with joinder after removal. These arguments can be raised in the context of any later appeal she may take.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Filed March 6, 1991

Entered: March 6, 1991
Clerk, U.S. District Court
District of Columbia

JACQUELYNE L. NEAL, Plaintiff,	)	
	)	Civil Action No.
v.	)	90-2677 (RCL)
WILLIAM H. BROWN, III, *et al* Defendants.	)	

MEMORANDUM AND ORDER

This matter comes before the court initially on plaintiff's motion for expedited consideration of plaintiff's motion to enjoin defendants from proceeding with prosecution of a pending civil action brought in the Eastern District of Pennsylvania. Because the Pennsylvania case will be placed on that court's trial scheduling list on March 8, 1991, plaintiff's motion for expedited consideration is GRANTED.

Before the court can decide plaintiff's request for an injunction, however, the court must first determine its own jurisdiction. Plaintiff earlier filed a motion to remand this case to Superior Court, claiming this case was improperly removed by defendants.

The original complaint herein was filed in Superior Court on October 5, 1990, naming the law firm Schnader, Harrison, Segal & Lewis, along with 5 individuals. It is undisputed that none of these 5 individuals is a resident of the District of Columbia, and plaintiff is a resident of Tennessee. Defendants removed this action on October 26. Plaintiff thereafter filed an amended complaint naming all of the individual partners of the law firm as defendants.

Since a partnership lacks capacity to be sued in the District of Columbia under the circumstances alleged here, and since none of the 5 individual defendants at the time the case was removed was a citizen of the District of Columbia, there was complete diversity and this case was properly removed to this court. See Day v. Avery, 548

F.2d 1018 (D.C., Cir. 1976), cert. den. 431 U.S. 908 (1977). Propriety of removal is determined solely on the basis of the pleadings at the time of removal. Pullman Co. v. Jenkins, 305 U.S. 534 (1939). Accordingly, this court has subject matter jurisdiction over this case and plaintiff's motion to remand is DENIED.

The underlying case here involves a dispute over the legal fees charged to plaintiff in connection with a Title VII case brought against EEOC. After this suit was filed, defendants herein filed their own suit against plaintiff in the Eastern District of Pennsylvania. This court agrees that all of the parties' claims which survive preliminary motions should be tried in one federal court. Unfortunately, defendants' motion to dismiss this action, and for partial summary judgment, is not yet ripe. Defendants failed to timely file a statement of material facts as required by Local Rule 108(h) with their motion. Defendants have now lodged such a statement with the Clerk, with a motion for leave to file it. The court hereby exercise its discretion, rejects plaintiff's opposition, and GRANTS defendants leave to file their statement of material facts as lodged with the Clerk of Court.

Plaintiff, however, must now be given an opportunity to amend her statement of genuine issues and supplement her opposition to defendants' motion to dismiss or for partial summary judgment. Plaintiff shall do so within 10 days of this date, or such further time as this court may allow upon proper application. Defendants may, within 7 days of plaintiff's supplement memorandum, file any final reply brief. The court will then promptly rule so that transfer of any of this case that remains can be promptly considered, if the trial has not already been held in Pennsylvania.

In the meantime, this court will DENY plaintiff's motion to enjoin defendants from prosecuting their action in Pennsylvania. Chief Judge Bechtle has already ruled on this precise question when he refused to stay proceedings therein. He still has the opportunity to accept plaintiff's argument, before trial, and this provides an adequate remedy at law, thereby precluding injunctive relief. In any event, it would be inappropriate for this court to overrule Chief Judge Bechtle, which is the effect of the relief sought by plaintiff. Accordingly, plaintiff's motion to enjoin prosecution of the Pennsylvania

action is DENIED.

The Clerk shall mail a copy of this order to Chief Judge Bechtle as well as the parties herein.

SO ORDERED.

Royce C. Lamberth
United States District Judge

DATE: March 6, 1991

Copy to:

The Honorable Louis Charles Bechtle, United States
District Court for the Eastern District of Pennsylvania
17613 U.S. Courthouse
Independence Mall West,
601 Market Street
Philadelphia, PA 19106

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Filed March 26, 1991 Entered: March 27, 1991

FRANCIS ABBOT, et al.)
)
v.) Civil Action
) No. 90-6619
JACQUELINE NEAL)
)

MEMORANDUM AND ORDER

BECHTLE, Ch. J. March 26, 1991

Presently before the court is defendant's motion to dismiss. For the reasons that follow, defendant's motion will be granted.

FACTS

This case arises out of a fee dispute between plaintiffs, partners in the Philadelphia law firm of Schnader, Harrison, Segal and Lewis ("Schnader")[1], and Jacqueline Neal, a former Schnader client. In 1986, Schnader was successful in representing Neal in a sexual discrimination suit before the Merit System Protection Board ("MSPB") against her former employer, the Equal Employment Opportunity Commission. Pursuant to the fee agreement between Schnader and Neal, Neal had paid certain fees to Schnader while her case was proceeding before the MSPB. The fee agreement stated that these fees were to be returned to Neal to the extent that any attorney's fees awarded plus the amounts paid by Neal exceeded Neal's financial obligation to Schnader. The MSPB awarded Schnader, as counsel for the prevailing plaintiff in the MSPB proceeding, attorney's fees of $56,134.95. Schnader claims that this amount was insufficient to satisfy Neal's obligation to the firm. Schnader sent a refund check representing what Schnader claims

1. For purposes of clarity, the court will hereinafter refer to the plaintiffs collectively as "Schnader"; it should be remembered, however, that the actual plaintiffs in this action are the individual law firm partners, and that the law firm, as an entity unto itself, is not a party to this action.

is the amount of fees previously paid by Neal less the amount of the alleged insufficiency.

Neal took issue with the amount of her refund. After several unsuccessful attempts to negotiate a resolution to the dispute with representatives of Schnader, Neal began "picketing" in front of Schnader's Philadelphia office building. Several months later, Neal began picketing in front of Schnader's Washington, D.C. office location. Additionally, Neal allegedly sent letters to several Schnader clients that set forth Neal's version of the facts surrounding the fee dispute.

On October 5, 1990, Neal filed suit in the Superior Court of the District of Columbia. Neal's complaint alleges that Schnader improperly withheld fees paid by Neal, and raises claims for breach of contract, fraud, deceit, and intentional infliction of emotional distress. On October 15, 1990, Schnader filed the instant action in this court. In this action Schnader seeks a declaratory judgment to the effect that: 1) Schnader is obligated to pay Neal no more than approximately $3,000.00 more than the amount of the tendered refund, and 2) Schnader was defamed by statements made by Neal in her letters and on her picketing placards. On October 26, 1990, Schnader removed Neal's District of Columbia Superior Court action to the United States District Court for the District of Columbia. Neal's motion to remand was denied by that court on March 6, 1991. Schnader's motion to dismiss is currently pending before the District of Columbia District Court.

Neal now moves for the dismissal of the action filed by Schnader in this court. For the reasons set forth below, Neal's motion will be granted.

DISCUSSION

In addressing the motion to dismiss, the parties' briefs raise issues related to whether Schnader's claim for relief is properly the subject of a declaratory judgment action, and whether principles of judicial economy require dismissal. The court, however, finds that the federal compulsory counterclaim rule, set forth in Fed.R.Civ.P. 13(a), is the authority that most directly affects the outcome of this motion to dismiss.

In relevant part, Rule 13(a) states:

> Compulsory Counterclaims. A Pleading shall state as a counterclaim any claim which at the time of serving the pleading the pleader has against any opposing party, if it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim . . . But the pleader need not state the claim if (1) at the time the action was commenced the claim was the subject of another pending action . . .

There is no room for argument on the question of whether Schnader's claim in this action "arises out of the transaction or occurrence" that is the subject of the action now pending before the District of Columbia District Court. In this court, Schnader seeks a judicial declaration that its conduct does not amount to a breach of its contract with Neal. In the District of Columbia District Court, Neal asserts that this same conduct amounts to a breach of the same contract. A closer connection between two claims could not be contemplated. Further, Schnader's additional action for a declaration that it has been defamed by Neal's statements most certainly stems from the same transaction that is the subject of the District of Columbia District Court action, i.e. the fee dispute.

Rule 13(a) also provides that a counterclaim may not be treated as compulsory in a given action if "at the time the action is commenced, the claim is already the subject of another pending action." Application of this principle to the case at hand raises the issue of when a removed action should be deemed "commenced" for purposes of Rule 13(a). Keeping in mind the chronological order of the relevant filings (first the filing of the complaint in D.C. Superior Court, then the filing of the complaint in this court, then the removal of the D.C. action to the District Court for the District of Columbia) the question becomes whether the District of Columbia action was "commenced," for Rule 13(a) purposes, when it was filed in the District of Columbia Superior Court or when it was removed to the District of Columbia District Court. If the District of Columbia District Court action, for Rule 13(a) purposes, was "commenced" when it was filed on October 5, 1990 in the District of Columbia Superior court, the Schnader claim was not then pending in any court proceeding and must, therefore, be raised in the present District of Columbia proceeding as a compulsory counterclaim; if the District

of Columbia District Court action was not "commenced" until removal, however, the Schnader claim was already pending at that time in this court, in which case Schnader cannot be compelled to raise it as a counterclaim in the District of Columbia District Court.

The court finds that the District of Columbia action was commenced, for purposes of Rule 13, at the time of the initiation of the action in the District of Columbia Superior Court. Several factors support this result. First, this decision best promotes the policy underlying the exception to the compulsory counterclaim rule now at issue. The "pending action" exception was designed to promote the same interest that underlies the well-established "first filed" rule: the forum chosen by a plaintiff for resolution of a particular claim should not be susceptible to modification by virtue of a later claim filed by the defendant. Like the first filed rule, the "pending action" exception to Rule 13 is designed to protect the party who first initiates an action from litigating that action in a forum of another's choosing. This policy is best served in the case at hand by deeming the District of Columbia action to have been commenced in Superior Court, in that Neal, as the plaintiff who first initiated her action in the District of Columbia, has chosen that locale for the resolution of her dispute, including any compulsory counterclaims that should be included. As noted earlier, the District of Columbia has ruled that it retains subject matter jurisdiction over Neal's claims. By not requiring the compulsory counterclaim rule to apply to the Superior Court filing, the court would effectively allow Schnader to defeat Neal's first choice of forum location, thereby undermining Neal's status as the initiator of the first action related to all of the transactions at issue. Second, the plain meaning of the language of Rule 13(a) itself supports the conclusion that a removed action must be deemed commenced at the time of the filing of the state court complaint. The rule contains no expressed limitations on the word "commenced" i.e. there is no command to interpret the word "commenced" to mean "commenced in federal court." Finally, the court notes that Rule 13(a) of the District of Columbia Superior Court Rules is essentially identical to Rule 13(a) of the Federal Rules, so that Schnader's claim was a compulsory counterclaim in the Superior Court before the action was removed. There is nothing to be served in the proper administration of the dispute between the parties that supports allow-

ing the removal of an action from a jurisdiction that employs a compulsory counterclaim rule to another jurisdiction that employs a compulsory counterclaim rule to defeat the applicability of the compulsory counterclaim rule.[2]

CONCLUSION

For the foregoing reasons, Schnader's complaint is dismissed as a compulsory counterclaim that must be raised in the action between the parties now pending in the District Court for The District of Columbia. This dismissal is without prejudice to Schnader's ability to assert its claim as a counterclaim in that action. An appropriate order will be entered.[3]

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2. The court's decision today is in accord with W. A. Krueger Co. v. Ottenheimer Publishers, 458 F.Supp. 1082, 1085 (E.D.Wisc. 1978) (suggesting that removed actions are commenced at the time of the state court filing for purposes of Rule 13(a).

3. Schnader is free, of course, to raise its counterclaim in the District of Columbia District Court and subsequently move for transfer of that action to this court. Nothing in this memorandum should be construed as a comment on whether such a transfer would be appropriate.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

FRANCIS ABBOT, *et al.*	)	
	)	
v.	)	Civil Action
	)	No. 90-6619
JACQUELINE NEAL	)	
	)	

ORDER

AND NOW, TO WIT, this 26th day of March, 1991, upon consideration of defendant's motion to dismiss, IT IS ORDERED that said motion is granted. This dismissal is without prejudice to plaintiffs' right to assert their claims in the action between the parties now pending in the United States District Court for the District of Columbia.

LOUIS C. BECHTLE, Ch. J.

Entered: March 27, 1991
Clerk of Court

No. 92-1440

In the Supreme Court Of the United States

OCTOBER TERM, 1992

JACQUELYNE L. NEAL,

Petitioner,

v.

WILLIAM H. BROWN, III, *et al.*,

Respondents.

On Petition for Writ of Certiorari
To the United States Court of Appeals
For the District of Columbia Circuit

BRIEF FOR RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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No. 92-1440

In the Supreme Court Of the United States

OCTOBER TERM, 1992

JACQUELYNE L. NEAL,

Petitioner,

v.

WILLIAM H. BROWN, III, *et al.*,

Respondents.

On Petition for Writ of Certiorari
To the United States Court of Appeals
For the District of Columbia Circuit

BRIEF FOR RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

COUNTER-STATEMENT OF THE CASE

By her petition for a writ of certiorari, the plaintiff in this diversity case seeks to have this Court review the unanimous decision by a panel of the United States Court of Appeals for the District of Columbia Circuit (Wald, Silberman, and D. H. Ginsburg, *JJ.*) dismissing for lack of jurisdiction an appeal from an interlocutory order denying a motion to remand. We review the history of the case in

some detail because, as the court of appeals noted, "Although the disposition of this appeal is straightforward, its path to this court was not" (Pet. App. 2a).[1]

Proceeding *pro se,* petitioner Jacquelyne L. Neal commenced this action October 5, 1990 by a complaint in the Superior Court of the District of Columbia against the law firm of Schnader, Harrison, Segal & Lewis, a partnership engaged in the practice of law; three of its partners; one individual who is counsel to the firm; and one individual who formerly was an associate of the firm (A. 1-22).[2] The action involves a dispute over the legal fees the firm charged Ms. Neal in connection with its representation of her in a discrimination claim against her former employer, the United States Equal Employment Opportunity Commission.

The defendants removed Ms. Neal's action to the United States District Court for the District of Columbia as permitted by 28 U.S.C. § 1441, there being complete diversity of citizenship between the parties, the matter in controversy exceeding $50,000, and no defendant properly joined and served being a citizen of the District of Columbia (A. 45-48).[3] Ms. Neal then moved to remand. By order dated March 6, 1991, the district court denied Ms. Neal's motion to remand (Pet. App. 5a-7a).

On October 15, 1990, five days after Ms. Neal filed her District of Columbia lawsuit, the Schnader firm's individual partners started a declaratory judgment action against Ms. Neal in the United States District Court for the Eastern District of Pennsylvania (A. 23-43). Ms. Neal moved to dismiss the Pennsylvania action (A. 149) and also moved in the District of Columbia court to enjoin defendants from prosecuting the Pennsylvania action (A. 256).

The District of Columbia district court denied Ms. Neal's motion for injunction in the same March 6, 1991 order in which it denied her motion to remand (Pet. App. 5a-7a).

---

1. "Pet. App." references are to the appendix to the petition for writ of certiorari.

2. "A" references are to the appendix in the court of appeals.

3. None of the individuals named in Ms. Neal's complaint was a citizen of the District of Columbia. Under the law of the District of Columbia, a partnership cannot be sued as an entity. *Day v. Avery,* 548 F.2d 1018 (D.C. Cir. 1976), *cert. denied,* 431 U.S. 908 (1977).

By order dated March 26, 1991, the Pennsylvania district court granted Ms. Neal's motion to dismiss that action (Pet. App. 8a-13a).[4]

On March 29, 1991, Ms. Neal filed a timely notice of appeal from the District of Columbia district court's orders denying her motion to remand and denying her motion for an injunction (A. 183-84). Defendants moved immediately in the court of appeals to dismiss the appeal as moot on the injunction issue and to dismiss the appeal on the removal issue for lack of jurisdiction or, in the alternative, for summary affirmance.

A motion panel of the court of appeals granted defendants' motion to dismiss to the extent that it involved the district court's denial of Ms. Neal's motion to enjoin the Pennsylvania action because that issue was mooted by the Pennsylvania court's dismissal of the Pennsylvania action. The motion panel then referred to a merits panel the motion to dismiss the appeal to the extent that it involved the district court's denial of the motion to remand. The court appointed an amicus curiae, Professor William F. Fox, Jr., to argue the appeal on behalf of Ms. Neal and, specifically, to address whether the denial of Ms. Neal's motion to remand is reviewable before final judgment (A. 235-36).

The court of appeals heard oral argument on November 16, 1992, at which time Professor Fox, Ms. Neal, and counsel for defendants each presented argument. By opinion issued December 11, 1992, the court of appeals dismissed Ms. Neal's appeal for lack of jurisdiction. The court of appeals held that a denial of a motion to remand is not appealable under 28 U.S.C. § 1291 or under any of Ms. Neal's and amicus's other "creative" suggestions for jurisdiction (Pet. App. 3a-4a).

SUMMARY OF ARGUMENT

The petition for writ of certiorari raises no question of sufficient importance to justify review by this Court. The court of appeals' ruling involves a technical, procedural issue that has no national significance whatsoever and that

4. The Pennsylvania district court held that the claims in that action were compulsory counterclaims in the District of Columbia action.

will rarely, if ever, arise. Moreover, the court of appeals' decision is entirely consistent with the decisions of the seven other courts of appeals that have dealt with this issue. In short, not only does the petition raise no issue worthy of this Court's consideration, but also the court of appeals' decision was clearly correct.

ARGUMENT

I. THE PETITION RAISES NO QUESTIONS THAT DESERVE CONSIDERATION BY THIS COURT.

The petition for writ of certiorari raises no questions that deserve consideration by this Court. The court of appeals' opinion concerned only the issue of the appealability of a denial of a motion to remand, hardly an issue of sufficient importance to merit this Court's attention. Moreover, the peculiar factual convergence that occurred in this case of an order denying a motion to remand coupled with an order denying a motion for an injunction that became moot before the appeal was taken will rarely, if ever, arise. In short, there exist no special or important reasons to grant the writ, and this Court should deny it.

II. THE DECISION WAS CLEARLY CORRECT AND IS IN ACCORD WITH THE DECISIONS OF THE SEVEN OTHER COURTS OF APPEALS THAT HAVE CONSIDERED THE QUESTION

This Court should deny the petition for a writ of certiorari for the additional reason that the court of appeals' decision is clearly correct and wholly consistent with the decisions of every court of appeals to have considered the issue. Specifically, as the court of appeals here noted, *every* court of appeals to have considered the issue (seven in all) has held that the denial of a motion to remand is not appealable. *See, e.g., Estate of Bishop v. Bechtel Power Corp.*, 905 F.2d 1272 (9th Cir. 1990); *Rohrer, Hibler & Replogle, Inc. v. Perkins*, 728 F.2d 860 (7th Cir.), *cert. denied*, 469 U.S. 890 (1984); *Poirrier v. Nicklos Drilling Co.*, 648 F.2d 1063 (5th Cir. 1981); *Three J Farms v. Alton Box Board Co.*,

609 F.2d 112 (4th Cir. 1979), *cert. denied*, 445 U.S. 911 (1980); *Aberle Hosiery Co. v. American Arbitration Ass'n*, 461 F.2d 1005 (3d Cir. 1972); *Brough v. United Steelworkers of America*, 437 F.2d 748 (1st Cir. 1971); *Wilkins v. American Export-Isbrandtsen Lines, Inc.*, 401 F.2d 151 (2d Cir. 1968).

Ms. Neal argues that her 28 U.S.C. § 1292 appeal from the denial of an injunction gave the court of appeals jurisdiction to review the order denying remand. But the courts of appeals have held that 28 U.S.C. § 1292 is inapplicable where the injunction order that would form the basis for appellate jurisdiction is moot at the time the appeal is taken. *See, e.g., Rodriguez v. Handy*, 802 F.2d 817, 821 (5th Cir. 1986); *Robert Stigwood Group Ltd. v. Hurwitz*, 462 F.2d 910, 914 & n.7 (2d Cir. 1972); *see also Marilyn T., Inc. v. Evans*, 803 F.2d 1383, 1385 & n.5 (5th Cir. 1986); *H. K. Porter Co. v. Metropolitan Dade County*, 650 F.2d 778, 782 (5th Cir. 1981); *Brown v. New Orleans Clerks & Checkers Union*, 590 F.2d 161, 165 (5th Cir. 1979). Thus, the court of appeals' dismissal of the appeal was in complete accordance with well-settled law and was entirely correct.[5]

---

5. In her petition for a writ of certiorari, Ms. Neal alludes to some alleged impropriety in the court of appeals' appointment of an amicus curiae. This hardly is an issue that would justify review by this Court. The court of appeals' appointment of amicus was entirely proper and clearly was intended only to benefit Ms. Neal. In any event, Ms. Neal submitted her own brief in the court of appeals and participated in the oral argument herself. The amicus acted merely as a friend of the court and in no way infringed upon Ms. Neal's right to proceed *pro se*.

CONCLUSION

For all of the foregoing reasons, this Court should deny Ms. Neal's petition for writ of certiorari.

Respectfully submitted,

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April 7, 1993.

Supreme Court, U.S.
FILED
APR 20 1993
OFFICE OF THE CLERK

No. 92-1440

In The

Supreme Court of the United States

OCTOBER TERM, 1992

JACQUELYNE L. NEAL,

Petitioner,

v.

WILLIAM H. BROWN, et al., partners practicing law under the firm name of Schnader, Harrison, Segal & Lewis

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

PETITIONER'S REPLY TO BRIEF IN OPPOSITION

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Three J Farms v. Alton Box Board Co., 609 F.2d 112 (4th Cir. 1979), cert. denied, 445 U.S. 911 (1980)	2
Wilkins v. American Export-Isbrandtsen Lines, Inc., 401 F.2d 151 (2d Cir. 1968)	2

No. 92-1440

In The

Supreme Court of the United States

OCTOBER TERM, 1992

JACQUELYNE L. NEAL,

Petitioner,

v.

WILLIAM H. BROWN, et al., partners practicing law under the firm name of Schnader, Harrison, Segal & Lewis

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

PETITIONER'S REPLY TO BRIEF IN OPPOSITION

Respondents, in their brief in opposition, attempt to dissuade this Court from granting a writ of certiorari, by erroneously asserting that the lower court's decision to dismiss Petitioner's appeal was "correct" and was "wholly consistent with the decisions of every court of appeals to have considered the issue." [4-5, Brief in Opp.]

Respondents' current effort to support the lower court's decision is in wide contrast to the action taken by Respondents just three (3) months ago regarding the same decision. After Petitioner filed a 20-page motion with the lower court to stay the issuance of the mandate of its defective decision, Respondents remained silent and filed a one sentence reply, stating that "Defendants-Appellees take no position on plaintiff-appellant's Motion to Stay the Issuance of the Mandate served by mail on January 8, 1993. Respectfully submitted, Thomas Earl Patton (D.C. Bar No. 009761) . . . ." Respondents made no attempt to lend any support to the defective decision.

Respondents now claim (via a different counsel of record, who, like Thomas Earl Patton, appears as a defendant in Petitioner's multi-million dollar action) that the lower court's decision was "correct," and accordingly, Respondents attempt to support the defective ruling by citing various cases.

Suffice it to say, none of the cases offered by Respondents relates to the various issues raised in the petition, nor support the lower court's dismissal of Petitioner's appeal, inasmuch as the facts of the cases do not remotely relate to the facts of this case.

The cases cited by Respondents all relate to appeals taken under 28 U.S.C. §1291, regarding the sole denial of a motion to remand. Specifically, these cases simply held that a denial of remand, "standing alone" is not a final appealable order under §1291. See Three J Farms, Inc. v. Alton Box Board Co., 609 F.2d 112, 114 (4th Cir. 1979), cert. denied, 445 U.S. 911 (1980); Wilkins v. American Export-Isbrandtsen Lines, Inc., 401 F.2d 151 (2d Cir. 1968); Brough v. United Steelworkers of America, 437 F.2d 748, 749 (1st Cir. 1971). In the cited cases, appeal was not taken under §1292(a)(1) and the courts uniformly held that the order denying remand to the state court was unreviewable because the order did not involve an injunction, or that the plaintiff failed to seek district court certification for interlocutory appeal. See Rohrer, Hibler & Replogle, Inc. v. Perkins, 728 F.2d 860, 863 (7th Cir.), cert. denied, 469 U.S. 890 (1984); Estate of Bishop v. Bechtel Power Corp., 905 F.2d 1272, 1275 (9th Cir. 1990); Poirrier v. Nicklos Drilling Co., 648 F.2d 1063 (5th Cir. 1981).

Significantly, in Three J Farms, Inc., supra, the court elected to treat the appeal as a petition for writ of mandamus, and directed that the case be returned to the State court, notwithstanding the apparent lack of appealability under §1291. Similarly, in Aberle Hosiery Co. v. American Arbitration Ass'n., 461 F.2d 1005, 1006 (3d Cir. 1972), the court indicated that an interlocutory appeal of a separate order relating to an injunction, could have invoked the applicability of §1292(a)(1).

Respondents, like the lower court, are attempting to mix apples with oranges, by throwing Petitioner (who is obviously appearing pro se) into an arena (§1291) which is totally unrelated to §1292(a)(1), the statute upon which Petitioner's appeal was taken.

The cases offered by Respondents do not support Respondents' argument, nor support the Opinion, inasmuch as those cases are ingermane to the facts of Petitioner's case. The facts are clearly outlined in the petition within the Statement of the Case, and noticeably, Respondents did not attack and/or attempt to refute one statement contained in Petitioner's expansive Statement of the Case, including the noteworthy statement that "[t]he court . . . stripped the injunctive relief issue without addressing the undisputed fact that the need for injunctive relief still exists, inasmuch as Respondents have not abandoned their forum shopping efforts." [10, Pet.]

In lieu of divulging to this Court that the injunctive relief issue is not moot, Respondents shrewdly directed this Court's attention to various cases, asserting that "the courts of appeals have held that 28 U.S.C. §1292 is inapplicable where the injunction order that would form the basis for appellate jurisdiction is moot at the time the appeal is taken." [5, Brief in Opp.]

Significantly, three of the cases cited by Respondents clearly do not support Respondents' argument; rather, the cases embrace Petitioner's argument, i.e., that the injunctive relief issue is not moot inasmuch as there is "some cognizable danger of recurrent violation . . ." See Robert Stigwood Group Ltd. v. Hurwitz, 462 F.2d 910, 913 (2d Cir. 1972); Marilyn T. Inc. v. Evans, 803 F.2d 1383, 1385 (5th Cir. 1986); Brown v. New Orleans Clerks & Checkers Union, 590 F.2d 161, 165 (5th Cir. 1979). In each of these cases, the courts clearly recognized that when there is a "reasonable

expectation that the wrong will be repeated . . .,'' the issue before the court is not moot. The remaining cases offered by Respondents are equally unsupportive of Respondents' argument inasmuch as the injunctive relief issue, as well as the remand issue, were properly before the court. Rodriguez v. Handy, 802 F.2d 817 (5th Cir. 1986); H. K. Porter Co. v. Metropolitan Dade County, 650 F.2d 778 (5th Cir. 1981).

Notwithstanding Respondents having cited the foregoing cases for the proposition that ''the court of appeals' dismissal of the appeal was in complete accordance with well-settled law,'' Respondents conspicuously avoided making any definitive assertion to this Court that the issue of injunctive relief was allegedly moot at the time the appeal was taken by Petitioner. [5, Brief in Opp.]

Based upon the foregoing, it is clear that the cases cited by Respondents do not relate to the various issues raised in the petition, and the facts of the foregoing cases obviously do not embrace the facts of the attendant case. Therefore, all of the cities offered by Respondents in support of their arguments were obviously misplaced.

Respondents' assertion that ''[t]he petition raises no questions that deserve consideration by this Court,'' is totally unfounded. [4 Brief in Opp.; 14-25, Pet.] Respondents' baseless assertion represents nothing more than an unsupported conclusionary statement.

Via their unsupported statement, Respondents, in essence, are appealing to this Court to close its eyes to the issues presented in the petition, and allow all courts, hereinafter, to use the judicial system as a haven for attorneys who appear as defendants in cases involving fraudulent billing statements. Respondents, via their unsupported conclusionary statement, are in essence, appealing to this Court to send forth a resounding message to the American people that clients are easy prey for attorneys, and those who haul their attorneys into court raising claims involving fraudulent billing statements will have no protection within the judicial system.

Contrary to Respondents' additional baseless assertion [3, Brief in Opp.], the issues raised in the petition have national significance,

as clearly illuminated in the Reasons For Granting the Writ. [14-25, Pet.]

Respondents' 6-page brief contains deceptive statements, e.g., within Respondents' Counter-Statement of the Case, Respondents interjected their own testimony as being the testimony of Petitioner, by erroneously asserting that on October 5, 1990, pro se Petitioner commenced this action "against the law firm of Schnader, Harrison, Segal & Lewis . . . ." [2, Brief in Opp.]

Neither the face of Petitioner's Original Complaint [1A],[1] nor the Amended Complaint [93-95A], reflect in the caption that Petitioner was suing Schnader, Harrison, Segal & Lewis Law Firm; nor does the lead paragraph of the Complaint contain the caption of Schnader, Harrison, Segal & Lewis Law Firm. (Emphasis added) [2, Appellant's Reply Brief] As evidenced by paragraph 3 of the Complaint, the term "law firm" was used to identify the type of business in which Respondents are engaged, to wit, "doing business as a law firm." [2A; 96A; 2, Appellants' Reply Brief]

Petitioner clearly averred in [Appellant's] brief that "[t]he court below erred in failing to include in its Order that [Petitioner] did not sue the partnership as an entity; that [Petitioner] offered verifiable information demonstrating that feverish efforts were made by [Petitioner] to ascertain the identifications of all partners (a total of 102) prior to filing the Complaint . . . [and] . . . the efforts made by [Petitioner] to ascertain the identifications of all partners cannot, and do not, by any stretch of the imagination 'remotely' infer that she attempted to [sue], or believed in her mind or otherwise, that she was suing an entity." [3, Appellant's Reply Brief]

Respondents did not author Petitioner's Complaint nor accompany Petitioner upon the filing of her Complaint; therefore, Respondents cannot speak to and/or draw a solidified conclusion as to Petitioner's 'thought process' which existed prior to, and/or at the time of filing, inasmuch as Petitioner's 'thought process' was confined within

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1. Materials which appeared in the Appendix filed in the Court of Appeals shall be referred to as ["_____ A"]

Petitioner's mind. [3, Appellant's Reply Brief]

Respondents' brief in opposition represents nothing more than a charade. Respondents' inability to face the issues presented in the petition, without distorting the facts and juggling unrelated cases, further magnifies the need for this Court's review of the lower court's defective ruling.

CONCLUSION

For the reasons previously outlined in the petition, and based upon the foregoing reasons, this Court should grant the petition for writ of certiorari.

Respectfully submitted,

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April 19, 1993